

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**WPO No. 352 of 2024
MAHESH KUMAR AGARWAL
VS
UNION OF INDIA AND ANR**

For the petitioner	:	Mr. Rajarshi Dutta, Adv. Mr. Nilay Sengupta, Adv. Mr. Sujit Banerjee, Adv.
For the Union of India/respondents	:	Mr. Ashoke Kumar Chakraborty, Ld. A.S.G.I. Mr. Kumar Jyoti Tewari, Adv., Mr. Tirtha Pati Acharyya, Adv.,
Hearing concluded on	:	09.05.2024
Judgment on	:	15.05.2024

Sabyasachi Bhattacharyya, J:-

1. Heard learned counsel for the parties.
2. The issue which has fallen for consideration is whether the rigours applicable to issuance of a passport for the first time apply to renewal of passport after the expiry of the term for which it was initially granted.
3. The petitioner was convicted and sentenced to maximum imprisonment of four years under Sections 120B, 420, 471, 411 and 471 of the Indian Penal Code (IPC) on April 25, 2022 by a Delhi court. An appeal is pending against the same before the High Court at Delhi. By an order dated September 4, 2023, a Learned Single Judge of the

Delhi High Court granted no objection/permission for renewal of the petitioner's passport for a period of ten years upon considering that the order suspending the sentence of the petitioner noted that the petitioner shall not leave the country without the permission of the Court.

4. On the other hand, in a different pending criminal proceeding before the Additional Judicial Commissioner XVI-cum-Special Judge, NIA, Ranchi, the said court by an order dated July 10, 2023 directed the passport of the petitioner to be handed over to the petitioner for the limited purpose of renewal on furnishing the indemnity bond of Rs. 50,000, subject to filing of an undertaking that he will not obtain Visa to travel outside India after renewal of passport without permission of the said court and will deposit the passport to the court's office immediately after renewal.
5. Learned counsel for the petitioner argues that in view of both the courts having granted permission for renewal, the passport of the petitioner should be renewed for a period of ten years.
6. It is argued that the provisions of Section 6 of the Passports Act, 1967 (hereinafter referred to as "the 1967 Act") applies only to issuance of passports and not to renewal. Hence, irrespective of Section 6(2)(f) of the 1967 Act, the petitioner's passport should be renewed for the default period of ten years as stipulated under Rule 12 of the Passport Rules, 1980 (in short, "the 1980 Rules").

7. Controverting such submission, the respondent-authorities argue that the rigours of issuance of passport also apply to a renewal after the expiry of the tenure of passport.
8. In support of his submissions, learned counsel for the petitioner has cited several judgments which are dealt with below.
9. In *Ashok Khanna vs. Central Bureau of Investigation*, reported at 2019 SCC OnLine Del 11080, a learned Single Judge of the Delhi High Court observed that Section 6 is not applicable to the case of a renewal. While so holding, the learned Single Judge considered the distinctions between Form EA(P)-1 for new/re-issue/replacement of lost/damaged passports, which contains a declaration by the applicant whether any criminal case is pending and furnishing of No Objection Certificate from the competent court, and Form EA(P)-2, which applies to renewal of passport, containing a clause for disclosure of whether any criminal case is pending but without the requirement of furnishing a No Objection Certificate from the criminal court.
10. On such premise, the court went on to hold that since there is separate provision for renewal of passport, Section 6 is not applicable. The same view was followed by a learned Single Judge of the Karnataka High Court in *Krishna Chiranjeevi Rao Palukuri Venkata vs. Union of India, Ministry of External Affairs, represented by its Principal Secretary and others*, reported at 2020 SCC OnLine Kar 3437.
11. A contra view, however, was taken by the learned Single Judge of the Andhra Pradesh High Court in *Kadar Valli Shaik v. Union of India, Rep. By its Secretary, New Delhi and others*, reported at 2023 SCC

OnLine AP 406. The said learned Single Judge read section 5 of the 1967 Act along with Rule 5 and the Forms in Schedule-III to observe that it is evident that renewal of passport is also covered under Section 5 of the Act and issue as well as renewal of passport shall be subject to the other provisions of the Act which include Section 6 as well.

12. In a judgment of this Court dated December 18, 2023 in *WPO No.1778 of 2023 [Arabul Islam and ors. Vs. Union of India and ors.]*, a similar view was expressed by considering the relevant Sections of the 1967 Act. This Court took into consideration the language of Section 5 and Section 6 of the 1967 Act and the Notification of the Central Government providing exemptions under the latter Section to hold that the rigours of Section 6(2)(f) apply to re-issuance of passports.
13. Although the above judgements are germane in the present context, two others, also cited by the petitioner are not.
14. In *Ganni Bhaskara Rao vs. Union of India and another*, reported at 2022 SCC *OnLine AP 824*, there was a subsisting passport and the respondent-authorities were not returning the passport on the ground of adverse police report, which was being decided by the Court. It was held by the court that the suppression of the information of pendency of criminal case could not entitle the authorities to withhold the passport. Thus, the consideration in the said case was somewhat different from the present.
15. Again, in the judgment of the Supreme Court in *Vangal Kasturi Rangacharyulu vs. Central Bureau of Investigation*, reported at 2021

SCC OnLine SC 3549, the Supreme Court in paragraph 9 held that the conviction of the appellant therein stands still the disposal of the criminal appeal and the sentence which he had to undergo was for a period of one year. The passport-Authority, it was held, cannot refuse the renewal of the passport on the ground of pendency of the criminal appeal. The court held that Section 6(2)(f) relates to a situation where the applicant is facing trial in a criminal court and distinguished the same from the facts of the said case.

16. Thus, in the said case, Section 6(2)(f) did not apply at all as the appellant therein had already been convicted.
17. Moreover, the Supreme Court did not lay down any general proposition of law but directed renewal simpliciter in a single sentence. Hence, the only conclusion which can be drawn therefrom is that the direction passed therein was not under Article 141 of the Constitution but generally under Article 142, which power is not vested with this Court.
18. Thus, the last-cited judgment of the Andhra Pradesh High Court and that of the Supreme Court are not germane in the present context.
19. In order to consider the proposition laid down by the Delhi and Karnataka High Courts in *Ashok Khanna (supra)* and *Krishna Chiranjeevi Rao Palukuri Venkata (supra)* respectively, a consideration of the relevant provisions would be fruitful.
20. Sections 5, 6, 7, 8 and 9 of the 1967 Act are set out below:

“5. Applications for passports, travel documents, etc., and orders thereon--

(1) An application for the issue of a passport under this Act for visiting such foreign country or countries (not being a named foreign country) as may be specified in the

application may be made to the passport authority and shall be accompanied by 2 [Such fee as may be prescribed to meet the expenses incurred on special security paper, printing, lamination and other connected miscellaneous services in issuing passports and other travel documents.

Explanation.- In this section, "named foreign country" means such foreign country as the Central Government may, by rules made under this Act, specify in this behalf.

(1A) An application for the issue of-

- (i) a passport under this Act for visiting a named foreign country; or
- (ii) a travel document under this Act, for visiting such foreign country or countries (including a named foreign country) as may be specified in the application or for an endorsement on the passport or travel document referred to in this section, may be made to the passport authority and shall be accompanied by such fee (if any) not exceeding rupees fifty, as may be prescribed.

(1-B) Every application under this section shall be in such form and contain such particulars as may be prescribed.

(2) On receipt of an application 3 [under this section], the passport authority, after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing,-

- (a) issue the passport or travel documents with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of the foreign country or countries specified in the application; or
- (b) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of one or more of the foreign countries specified in the application and refuse to make an endorsement in respect of the other country or countries; or
- (c) refuse to issue the passport or travel document or, as the case may be, refuse to make on the passport or travel document any endorsement.

(3) Where the passport authority makes an order under clause (b) or clause (c) of sub-section (2) on the application of any person, it shall record in writing a brief statement of its reasons for making such order and furnish to that person on demand a copy of the same unless in any case the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such copy.

6. Refusal of passports, travel documents, etc.—(1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country under clause (b) or clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and no other ground, namely: -

- (a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India;
- (b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;
- (c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country;
- (d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of

sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely: -

- (a) that the applicant is not a citizen of India;
- (b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;
- (c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;
- (d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;
- (e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;
- (f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;
- (g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;
- (h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;
- (i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.

7. Duration of travel document

A passport or travel document shall, unless revoked earlier, continue in force for such period as may be prescribed and different periods may be prescribed for different classes of passports or travel documents or for different categories of passports or travel documents under each such class:

Provided that a passport or travel document may be issued for a shorter period than the prescribed period-

- (a) if the person by whom it is required so desires; or
- (b) if the passport authority, for reasons to be communicated in writing to the applicant, considers in any case that the passport or travel document should be issued for a shorter period.

8. Extension of period of passport

Where a passport is issued for a shorter period than the prescribed period under section 7, such shorter period shall, unless the passport authority for reasons to be recorded in writing otherwise determines, be extendable for a further period (which together with the shorter period shall not exceed the prescribed period) and provision of this Act shall apply to such extension as they apply to the issue thereof.

9. Conditions and forms of passports and travel documents—

The conditions subject to which, and the form in which, a passport or travel document shall be issued or renewed shall be such as may be prescribed:

Provided that different conditions and different forms may be prescribed for different classes of passports or travel documents or for different categories of passports or travel documents under each such class:

Provided further that a passport or travel document may contain in addition, to the prescribed conditions such other conditions as the passport authority may, with the previous approval of the Central Government, impose in any particular case."

- 21.** A composite reading of the 1967 Act reveals that the term "renewal" has not been used anywhere except for Section 9, which merely stipulates that the condition subject to which, and the form in which, a passport or travel document shall be issued or renewed shall be such as may be prescribed. However, the said provision is not the source of power of the authorities to renew the passport.
- 22.** Section 5 only speaks of issuance of a passport and not renewal or extension.
- 23.** Section 7 provides that a passport, unless revoked earlier, shall continue in force for such period as may be prescribed, provided that it may be issued for a shorter period than the prescribed period if the applicant so desires or if the passport authority, for reasons to be communicated in writing to the applicant, considers in any case that the passport should be issued for a shorter period.
- 24.** Section 8 speaks of extension of period of passport, which can be somewhat equated with the concept of renewal. As per the said Section, a situation is contemplated where a passport is issued for a shorter period than that prescribed under Section 7, in which case the passport authority can, unless for reasons to be recorded in writing it determines otherwise, extend the passport for a further period which together with the shorter period shall not exceed the total prescribed period. Thus, Section 8 governs situations where a short-term passport is issued, which can be extended only up to the default

period as prescribed. Conspicuously, in the last part of Section 8, it is stipulated that the provisions of the 1967 Act shall apply to such extension *as they apply to the issue thereof*.

- 25.** Thus, the only situation where an extension is contemplated in the 1967 Act is under Section 8 which specifically applies all the rigours of issuance of passport to extensions as well.
- 26.** The Delhi and the Karnataka High Courts respectively have proceeded to interpret the provisions of the Act in the light of the Rules framed thereunder. Section 24 of the Act confers the rule-making power on the Central Government. Sub-section (2)(c) thereof confers rule-making power regarding the form and particulars of application for the issue or renewal of a passport or travel document or for endorsement on a passport or travel document and where the application is for the renewal, the time within which it shall be made.
- 27.** Conspicuously, although Rule 12 stipulates the prescribed period during which a passport shall be in force by default, no particular period has been stipulated in terms of Section 24(2)(c) within which a renewal application has to be made.
- 28.** With utmost respect to the erudition of the learned Judges of the Delhi and the Karnataka High Courts, it is a settled proposition of law that the power to frame Rules can be conferred by an Act but the converse is not true. Rules are creatures of the parent Act and as such, are by their very nature subservient to the parent statute. It would be an absurd interpretation if it is held that a power not conferred by the Act is conferred under the Rules, since the Rules are

a delegated piece of legislation and operate within the limited framework of the rule-making power of the Executive as conferred by the parent Act itself. Thus, the proposition that although the 1967 Act itself does not confer any power of renewal, the Rules so vest in the authorities, is untenable in law.

- 29.** The other absurd proposition which would follow from such an approach is that the Act itself, although it provides for issuance of a passport and revocation of the same, does not contemplate any renewal.
- 30.** It may be noted here that although Form EA(P)-2 deals with applications for renewal and does not provide for furnishing a copy of a no objection certificate from the jurisdictional criminal court, such omission in the Rules cannot be construed to divest the passport authority of the power to refuse renewal on grounds provided in law. Although, as per the Form, in the first place no requirement for furnishing a no objection certificate is provided, the same does not deter the authorities from insisting on the applicant complying with the provisions of law and refusing to grant renewal in the event criminal proceedings are pending against the applicant and the law debars the authority from granting such renewal.
- 31.** Therefore, we have to turn to the parent Act itself to seek the source of power of the passport authority to grant renewal.
- 32.** Section 8 confers the power of extension but within the limited conspectus of a situation where a passport is issued in the first place for a shorter period than the default period. A clue, however, has been

left in the last part of Section 8 which applies the provisions of the Act regarding issuance of a passport also to such extensions.

33. Taking the said proposition further, there is no reason why at the time of renewal of a full-tenure passport also, the rigours associated with issuance of a passport shall not be applicable.
34. Since Section 8 operates within the limited conspectus of Section 7, we have to look elsewhere in the Act to discover the source of power of the authority to renew passport after the entire default period is over.
35. Section 10 confers power on the passport authority, *inter alia*, to require the holder of a passport, by notice in writing, to deliver up the passport to it within such time as may be specified. Under sub-section (3) of the said Section, the passport authority may impound or cause to be impounded or revoke a passport or travel document under certain circumstances. Section 10(3)(e) stipulates, as one such circumstance, pendency of proceedings in respect of an offence alleged to have been committed by the holder of the passport before a criminal court in India.
36. Section 6(2)(f) of the 1967 Act imposes a similar restriction to issuance of passport under Section 5 on the same ground. In the absence of any other specific provision to renew passports granted for the default period for 10 years, the source of the power of the authority for renewal has to be derived from the same source as issuance of passport, that is, Section 5.
37. As the Rules provide for situations of renewal, there is no other option but to look to Section 5 itself for such power. It is rather obvious that

the power to issue a passport is not restricted to a single occasion at the inception but is vested in the authorities to be exercised any number of times. Thus, the power to renew a passport after the expiry of ten years can be equated to the power of re-issuance of passport, which is akin to issuance of a passport, under Section 5 of the 1967 Act itself.

- 38.** Having held so, in terms of Section 6(2), the restrictions stipulated in the said sub-section for issuance of passport also apply to a re-issuance/renewal of passport after the expiry of the due term.
- 39.** As per the provisions of the Act and the Rules as discussed above, a passport, once issued, shall be “in force” for ten years in case of a regular passport. Thus, immediately after the expiry of the same, it cannot be said that the passport still subsists.
- 40.** As such, the line of judgments which stipulates that a passport cannot be withheld without actually revoking it under Section 10 are not applicable to a passport which has spent its force by expiry of its tenure. In the latter case, the holder of the passport is no longer in possession of a valid, subsisting passport and the authorities need not or cannot impound or revoke such non-existent passport.
- 41.** Seen from another perspective, we cannot infer a *void* in the statute.
- 42.** Section 5, read with Section 6, restricts the passport authorities from issuance of passport under certain circumstances, including where a criminal case is pending against the applicant.

43. Again, during subsistence of the passport, the authorities are clothed with the power to revoke/impound the passport on a similar ground under Section 10.
44. Hence, it cannot be that the same restrictive principle does not apply also to a scenario where after expiry of the tenure of the passport, the applicant seeks a re-issuance/renewal.
45. Going by such logic, Section 5 is the source of power of the passport authority to renew a passport after the expiry of its tenure and, as a corollary thereto, the bar under Section 6(2) applies in case of renewals as well.
46. Hence, in utmost respect, I cannot but differ from the view taken by the Delhi and the Karnataka High Courts respectively in *Ashok Khanna (supra)* and *Krishna Chiranjeevi Rao Palukuri Venkata (supra)* and agree with the view taken by the learned Single Judge of the Andhra Pradesh High Court in *Kadar Valli Shaik's* case.
47. Hence, applying the said principle to the facts of the present case, although the Delhi High Court has granted a no objection for issuance of passport for ten years, the learned Special Judge, NIA, Ranchi has not. In fact, even if the petitioner has the permission in the Delhi case, where he has been convicted, with the rider that he cannot leave the country without permission of the court, in view of the refusal of the Ranchi court to grant permission at all to the petitioner to travel abroad, the bar envisaged in Section 6(2)(f) of the 1967 Act applies in full force. The learned Special Judge, NIA, Ranchi has merely permitted the petitioner to have his passport for the limited purpose of

renewal, immediately upon which the same has to be deposited with the court office. Hence, in the absence of any permission to travel abroad in the pending criminal case at Ranchi, the petitioner is debarred under Section 6(2)(f) to have a re-issuance/renewal of his passport. The permission given by the Ranchi High Court to present the passport for renewal does not confer any right on the petitioner to get such a renewal if law otherwise does not so permit.

48. Thus, in view of the above observations, the petitioner's plea to have a renewal of his passport cannot be granted.
49. Accordingly, WPO No.352 of 2024 is dismissed on contest, however, in the facts and circumstances of the case without any order as to costs.
50. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)